

**PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD**

Federal Board of Revenue
Versus
Mr. Rehan Zahid Warriach, Gujrat

**REPRESENTATION PREFERRED BY FEDERAL BOARD OF REVENUE AGAINST
FINDINGS / RECOMMENDATIONS DATED 30.11.2017 PASSED BY THE FTO IN
COMPLAINT NO. 425/LHR/IT(326)/612/2017**

I am directed to refer to your representation No. 4(612)S(TO-I)/2017, dated 28.12.2017 on the above subject and to say that the President has been pleased to pass the following order:

2. This Representation dated 28.12.2017 has been filed by the Agency-FBR against the findings of the FTO dated 30.11.2017 whereby it has been held:

“FBR to-

- i. Direct the concerned CIR to decide the refund claim of the complainant as per law; and
- ii. Report compliance within 45 days.”

3. Brief facts of the case are that this complaint has been filed under Section 10(1) of the FTO Ordinance, 2000 against non-issuance of income tax refund amounting to Rs. 1.711 million for tax years 2009 to 2015. The refund arose on account of excess deduction of income tax on consumption of electricity.

4. The Complainant engaged in the business of running a CNG station contents that he filed his income tax returns for tax year 2009 on 13.10.2012, for tax year 2010 on 28.12.2010, for tax year 2011 on 10.10.2012, for tax year 2012 on 10.10.2012, for tax year 2013 on 14.10.2013, for tax year 2014 on 31.10.2014 and for tax year 2015 on 24.10.2015 and efiled refund applications under Section 170 of the Income Tax Ordinance, 2001 on 13.10.2012, 22.09.2017, 13.10.2012, 16.10.2013, 11.07.2017 and 08.07.2017 respectively followed by reminder dated 17.07.2017 but no response was made by the Deptt. neither order was passed under Section 170(4) of the Ordinance within the prescribed time nor any notice under Section 123(3) of the Ordinance was issued to the Complainant to requisition information/ documents for processing of refund. Statedly, all supportive documents were furnished to the department but the claim was not settled. This attitude of the department was construed as maladministration under FTO Ordinance.

5. When confronted under Section 10(4) of the FTO Ordinance read with Section 9(1) of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013, the department vide letter No. 1288 dated 10.11.2017 stated that claim of refund requires scrutiny/ verification. By mere filing of return, a taxpayer does not become entitled to refund. Added that the Complainant has neither provided documentary evidence for scrutiny and verification nor filed prescribed refund application within the time as per Section 170(2)(a)& (c) of the Ordinance and so it could not be settled. The case is pending for want of the requisite documents to be provided by the Complainant. Furthermore, FBR vide letter No. 4(19)IT-Budget/2017 dated 23.02.2017 has clarified that no adjustment of withholding tax under any other head can be claimed. According to the department, no maladministration was involved in the case. Arguments heard and record perused by the FTO. Thus, FTO has issued aforementioned findings.

6. The instant Representation has been filed by the Agency. The Agency has stated that the Complainant has refund amounting to Rs. 172,437/-, Rs. 242,585/-, Rs. 287,707/-, Rs. 285,200/-, Rs. 284,176/-, Rs. 307,961/- and Rs. 131,370/- for tax years 2009 to 2015 of tax withheld under Section 235 of the Income Tax Ordinance, 2001. The taxpayer is not entitled to claim refund of excess payment of tax withheld in CNG cases as clarified by the FBR's letter No. 4(19)IT-Budget/2017 dated 23.02.2017. The taxpayer aggrieved on account of non- issuance of refund, filed a complaint No. 00000612/LHR/2017 dated 29.09.2017 before the H/Federal Tax Ombudsman.

7. The Agency has expressed that the FTO disposed of the complaint vide order dated 30.11.2017 with the recommendations to decide the refund claim of the Complainant as per law and report within 45 days. However, the FTO in para 5 of the impugned decision has rejected the departmental stance that the CNG stations are not entitled to claim any adjustment of tax withheld as clarified by the FBR through letter No. 4(19)IT-Budget/ 2017 dated 23.02.2017. The para 5 of the impugned decision and relevant portions of FBR's clarification is reproduced hereunder for ready reference:

“The FBR issued letter dated 23.02.2017 interpreting section 234A and issued clarification that the above mentioned tax is neither adjustable nor refundable. It is a settled law that the FBR had administrative control over the functionaries discharging their functions under the Ordinance but it does not figure in the hierarchy of the forum provided for adjudication of assessee's liability as to

55 (TO-1)
p m a

h m
21/12

por
h m
21/12
KST

